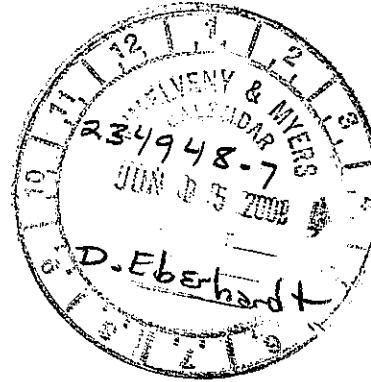


EXHIBIT 18



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12
 13 Attorneys for Defendants
 14 THUNDERWOOD HOLDINGS, INC.,
 15 BRIAN DUNNING, and BRIANDUNNING.COM

16
 17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19 SAN JOSE DIVISION

20 EBAY INC.,) CASE NO. C 08-4052 JF
 21 Plaintiff,)
 22 vs.)
 23 DIGITAL POINT SOLUTIONS, INC.;)
 24 SHAWN HOGAN; KESSLER's FLYING)
 25 CIRCUS; THUNDERWOOD HOLDINGS,)
 26 INC.; TODD DUNNING; DUNNING)
 27 ENTERPRISES, INC.; BRIAN DUNNING;)
 28 BRIANDUNNING.COM; and DOES 1-20,)
 29
 30 Defendants.)
 31

32 PROPOUNDING PARTY: PLAINTIFF EBAY INC.

33 RESPONDING PARTY: DEFENDANT BRIAN DUNNING

34 SET NO.: TWO (2)

35 Defendant Brian Dunning ("Defendant" and/or "Responding Party") hereby
 36 responds to the Second Set of Requests for Production (Nos. 33-34) propounded by Plaintiff
 37 eBay Inc. ("Plaintiff" and/or "Propounding Party") as follows:

38 / / /

GENERAL STATEMENT

2 Defendant has invoked his privilege against self-incrimination pursuant to the
3 Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973),
4 Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and
5 California Evidence Code section 940. Should Defendant determine that there is no longer the
6 threat of potential criminal prosecution and elect to withdraw his privilege against
7 self-incrimination in the future, Defendant expressly reserves the right to supplement his
8 responses.

9 Furthermore, the Federal Bureau of Investigation has seized all documents and
10 computers, disk drives, hard drives, cell phones and servers containing information potentially
11 related to this matter. Assistant United States Attorney Kyle F. Waldinger in charge of this
12 investigation has refused all requests to provide defendants with a copy of the material seized
13 by the FBI. Those items and records may contain information responsive to the requests
14 below, but those items and records are not in the possession, custody or control of Defendants.

15 Without waiving any of the foregoing, Responding Party responds to the
16 requests below:

RESPONSES

18 | REQUEST FOR PRODUCTION NO. 33:

19 All documents relating to the settlement of the CJ Litigation, including
20 Communications with Commission Junction regarding settlement, proposed or draft settlement
21 agreements or portions of such agreements, and any other Documents relating to the
22 negotiation, drafting and execution of the Settlement Agreement.

23 | RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

24 Responding Party objects on the ground that this request is vague and
25 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
26 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
27 which might violate the attorney-client privilege and/or the work product doctrine. Subject to
28 and without waiving the foregoing objections and based on a reasonable interpretation as to the

1 meaning of this request, Responding Party responds as follows: Responding Party will
2 produce all non-privileged documents responsive to this Request in its possession, custody
3 and/or control, if any, at a time and place mutually convenient to the parties.

4 **REQUEST FOR PRODUCTION NO. 34:**

5 All documents relating to any termination of a contractual or other business
6 relationship between any of Defendants and Commission Junction, including any termination of
7 an agreement entered into between any of Defendants and Commission Junction referred to as a
8 Publisher Service Agreement.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

10 Responding Party objects on the ground that this request is vague and
11 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects
12 to this request on the grounds that, as phrased, the request seeks documents the disclosure of
13 which might violate the attorney-client privilege and/or the work product doctrine. Subject to
14 and without waiving the foregoing objections and based on a reasonable interpretation as to the
15 meaning of this request, Responding Party responds as follows: Responding Party will
16 produce all non-privileged documents responsive to this Request in its possession, custody
17 and/or control, if any, at a time and place mutually convenient to the parties.

18

19 DATED: June 3, 2009

RUS, MILIBAND & SMITH
A Professional Corporation

20

21

By:



LEO J. PRESIADO
Attorneys for Defendants
Thunderwood Holdings, Inc., Brian Dunning
and BrianDunning.com

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PROOF OF SERVICE

eBay, Inc. v. Digital Point Solutions, Inc., et al.
Northern District of California, San Jose Division
Case No. C 08-4052 JF

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2211 Michelson Drive, Seventh Floor, Irvine, California 92612.

On June 3, 2009, I served the foregoing documents described as
**RESPONSES OF DEFENDANT BRIAN DUNNING TO SECOND SET OF REQUESTS
FOR PRODUCTION PROPOUNDED BY PLAINTIFF EBAY INC.** on the interested
parties in this action by placing a copy thereof enclosed in sealed envelopes addressed as
follows:

SEE ATTACHED SERVICE LIST

✓ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

— (By E-Mail) As follows: I caused the above-referenced document(s) to be transmitted to the above-named persons.

— (By Facsimile) As follows: I caused the above-referenced document(s) to be transmitted to the above-named persons by facsimile.

— (By Hand Delivery) As follows: I caused the above-referenced document(s) to be hand delivered to the above-named persons.

— (By Overnight Delivery) As follows: By overnight delivery via Overnite Express and/or Federal Express to the office of the addressee noted on the attached service list.

Executed on June 3, 2009, at Irvine, California.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


RHONDA RANSFORD

SERVICE LIST

eBay, Inc. v. Digital Point Solutions, Inc., et al.
Northern District of California, San Jose Division
Case No. C 08-4052

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